

Government, Media, and Hate Speech: Hate Speech Regulation in the United States

Erika Olsen

Abstract

This research reviews how the United States Supreme Court has applied the First Amendment to hate speech over the past century. It also compares these regulations to those in other nations, which tend to be almost opposite those enforced in the United States. This paper specifically reviews how the Supreme Court has determined what speech is protected and what will remain unprotected when it comes to offensive language and the tests that have been established to more easily determine whether or not certain types of speech can be legally banned. The paper also explores modern day cases of hate speech, especially those on social media, one of the fastest growing media platforms, and how they are perceived by society. Specifically, it reviews the opinions of those who support fewer restrictions and those who support a more European model of speech. Finally, it analyzes the trends in restrictions over the past century and combines this with a look at public views of free speech to predict where the United States government will stand in the future with regards to free speech.

This research was conducted through database searches that operationalized the definition of “hate speech.” The researcher reviewed FCC and FBI articles concerning the topic to become more familiar with the issue, how it is perceived in the United States, and how the government defines the term. The transcripts of Supreme Court cases that dealt with hate speech and related topics, such as true threats and fighting words, were reviewed through the use of various legal databases, including SupremeCourt.gov and the Cornell Legal Information Institute. Further clarification on the impact of the decision and on the dissenting opinions were found through Oyez and respected publications, such as the New York Times. Further data was retrieved from respected sources such as the Pew Research center and the Center for Democracy and

Technology.

The data collected presented the vast range of opinions on hate speech in the United States and a great disparity between United States free speech laws and those seen in other nations. Though post-Revolution America has gone through various stages of free speech, the Supreme Court has mainly sided against government restrictions of speech. Even in cases where many disagreed or there was outrage over a Supreme Court decision, the justices are able to justify it with the Constitution and precedents from earlier cases. The researcher views this as an effort to maintain a free and open democracy that allows for an ever-growing marketplace of ideas and ideologies. Though these ideas often conflict with each other, it is necessary for them to exist in order for us to make educated decisions about what is best for our nation.

The social views of hate speech, however, have taken a much different path. More and more, we see Americans calling for tighter restrictions on hate speech and a ban of offensive language. During his second term, President Obama was criticized after he criticized college students who wanted to block out opposing views on their campuses because those views offended them. Similarly, this is why the ACLU has fought so hard against speech codes on college campuses, as they block the necessary exchange of ideas and restrict speech that is legally protected by the Constitution.

Based on the precedents set by the Supreme Court, without a complete overhaul of the entire US legal system and Constitution, the government would never be able to restrict speech in the way that European laws do or in the form of an Orwellian state. Despite public opinion, speech will likely continue to remain free and open in the United States. Though social expectations may become more politically correct in the future, opposing thoughts and viewpoints, even those considered offensive will remain protected.